

DDS Memorandum

DDS-01-02

To: All DDS Licensed and Certified Service Providers

From: David Fray, Director, DDS

Date: December 26, 2001

Subject: Amended DDS Policy 1087 and new Procedures for Criminal Record Checks

DDS has amended Policy 1087 and has developed new Procedures for Conducting Criminal Record Checks on Employees of Service Providers for Individuals with Developmental Disabilities. These documents are now available for review and public comment. Written comments may be submitted to DDS for thirty days.

Policy 1087 (item 3. e). and the Procedures reflect a change in how national criminal record checks must be performed. Act 1548 [20-48-702 (b) (1)] allowed for the completion of only a national record check (no Arkansas check) when an employee or applicant (a) had not had been a resident of the state for five years or (b) had not worked for a DDS provider for sixty days. If a provider could verify the required residency or employment, an Arkansas check only would be performed [20-48-702 (b) (2)]. Due to a conflict with FBI policy, however, DDS has determined, and DHS Office of Chief Counsel has agreed, that providers must use another procedure for national record checks.

The Bureau (Identification Bureau of the Arkansas State Police) has informed DDS that the Bureau is not allowed to request a check of Federal Bureau of Investigation (FBI) files for a national criminal record check (CRC) unless the Bureau has already performed a state CRC. DDS sought verification of this issue from the Criminal Justice Information System (CJIS), a division of the FBI, and received this response: “...*fingerprints must be initially submitted to the state identification bureau for a check of state records before forwarding to the FBI for a national criminal history check.*”

An applicant or employee who requires a national criminal record check must therefore request and pay for both a national CRC AND a state CRC. An applicant or employee who meets either the five-year residency or 60-day employment qualification may still request a state-only CRC and should not submit a fingerprint card.

Comments on these procedures should be sent to: Shelley Lee, DDS, PO Box 1437 Slot N501, Little Rock, AR 72203. All other program inquiries should be directed to: Christopher Bliss, DDS Licensure, Slot N203, phone (501) 682-8696.

ARKANSAS DEPARTMENT OF HUMAN SERVICES
DIVISION OF DEVELOPMENTAL DISABILITIES SERVICES
DDS DIRECTOR'S OFFICE POLICY MANUAL

Policy Type	Subject of Policy	Policy No.
Administrative 1087	Criminal Records Checks	

1. Purpose. The purpose of this policy is to delineate the requirements, allowances, exclusions, and general implementation of criminal record checks, in accordance with Act 1548 of 2001, hereafter referred to as “the Act”.
2. Scope. This policy is applicable to all providers licensed and certified by DDS to provide services for persons with developmental disabilities, all employees of those providers, and all applicants for employment by those providers.
3. Requirements under the Criminal Record Checks policy:
 - (a) Requirement for completion and notarization of a criminal record check form (which complies with the Act) and completion of a fingerprint card (when required) by any person to whom the provider intends to offer employment on or after August 13, 2001
 - (b) Requirement for conveyance of forms and fees within five (5) days to the Arkansas State Police Bureau of Identification for any person to whom a service provider intends to offer employment
 - (c) Requirement for initiation of Central Registry checks by a service provider prior to an offer of employment
 - (d) Requirement for temporary disqualification for employment by a service provider upon discovery of a criminal record, pending a determination by the Division of Developmental Disabilities Services (DDS), based on the provisions of the Act
 - (e) Requirement for both an Arkansas and a national criminal record check unless the individual meets specific residency or employment qualifications
 - (f) Requirement for evidence that criminal record checks were performed on agency, temporary, and contract staff
 - (g) Requirement for notification by service providers to applicants and current employees that employment is contingent upon results of criminal record checks
 - (h) Requirement for a determination by DDS of an individual’s employment qualification or disqualification, based on the provisions of the Act, and for forwarding of this determination to the service provider
 - (i) Requirement for the denial or termination of employment by a service provider to any person determined by DDS to be disqualified for employment, based on the provisions of the Act
 - (j) Requirement for the maintenance of evidence of criminal record checks on applicants and current employees and copies of determinations by DDS

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- (k) Requirement that DDS issue a determination, based on the provisions of the Act, that a person is disqualified from employment with a service provider if that person has pled guilty or nolo contendere to or has been found guilty of certain offenses
- (l) Requirement that service providers not knowingly employ a person who has pled guilty or nolo contendere to or has been found guilty of certain offenses
- (m) Requirement that provisions of the Act not be waived
- (n) Requirement that conviction for certain offenses results in permanent disqualification from employment
- (o) Requirement for DDS to prepare necessary forms and to promulgate procedures
- (p) Requirement for DDS to establish remedies to be imposed for failure to comply with the Act
- (q) Requirement for all reports to remain confidential and restricted to the use of parties specified in the Act, and exempt from Freedom of Information Act (FOIA) disclosure, except to parties identified in the Act
- (r) Requirement for the immunity of parties for damages, other than for malicious acts or omissions
- (s) Requirement for completion of criminal record checks on all current employees of a service provider by October 1, 2002

4. Allowances under the Criminal Record Check policy:

- (a) Allowances for continued temporary employment of an individual, if no finding of fault records are found in a Central Registry, while awaiting the results of a criminal record check
- (b) Allowances for employment of an individual upon determination by DDS that the person is qualified for employment, based on the provisions of the Act
- (c) Allowances for employment of individuals with one conviction for certain offenses if conviction was ten years prior to application for employment
- (d) Allowances for employment of an individual convicted of a misdemeanor not related to exploitation, abuse, neglect, or sexual abuse of a person
- (e) Allowances for denial or revocation of a service provider's license for failure to obtain criminal record checks in compliance with the Act
- (f) Allowances for applicants and employees to challenge the completeness or accuracy of criminal history information to the Arkansas State Police, Bureau of Identification

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5. Exclusions from the Criminal Record Check policy:

This policy does not apply to:

- (a) A person who renders services subject to a professional license as a:
Licensed professional counselor, social worker, nurse, occupational therapist, pharmacist, physical therapist, physician, surgeon, podiatrist, psychologist, psychological examiner, speech-language pathologist, audiologist, or nursing home administrator.
- (b) An individual who has maintained employment in the state for twelve months, has successfully completed a criminal record check, and submits evidence thereof.

6. Offenses.

- (a) These offenses may disqualify an individual from employment by a service provider, as referenced in items 4. (c) and (d) of this policy:
 - 1. Manslaughter, as prohibited in § 5-10-104;
 - 2. Negligent homicide, as prohibited in § 5-10-105;
 - 3. False imprisonment in the first degree, as prohibited in § 5-11-103;
 - 4. Permanent detention or restraint, as prohibited in § 5-11-106;
 - 5. Robbery, as prohibited in § 5-12-102;
 - 6. Aggravated robbery, as prohibited in § 5-12-103;
 - 7. Battery, as prohibited in §§ 5- 13-201, 5-13-202, and 5-13-203;
 - 8. Aggravated assault, as prohibited in § 5-13-204;
 - 9. Introduction of controlled substance into body of another person, as prohibited in § 5-13-210;
 - 10. Terroristic threatening in the first degree, as prohibited in § 5-13-301;
 - 11. Sexual solicitation of a child, as prohibited in § 5-14-110;
 - 12. Violation of a minor in the first degree and second degree, as prohibited in §§ 5-14-120 and 5-14-121;
 - 13. Incest, as prohibited in § 5-26-202;
 - 14. Offenses against the family, as prohibited in §§ 5-26-303 - 5-26-306;
 - 15. Endangering the welfare of a minor in the first degree, as prohibited in § 5-27-203;
 - 16. Permitting child abuse, as prohibited in § 5-27-221(a)(1) and (a)(3);

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17. Engaging children in sexually explicit conduct for use in visual or print media, transportation of minors for prohibited sexual conduct, pandering or possessing visual or print medium depicting sexually explicit conduct involving a child, or use of a child or consent to use of a child in a sexual performance by producing, directing, or promoting a sexual performance by a child, as prohibited in §§ 5-27-303, 5-27-304, 5-27-305, 5-27-402, and 5-27-403;
18. Theft of property, as prohibited in § 5-36-103;
19. Theft by receiving, as prohibited in § 5-36-106;
20. Felony violation of the Uniform Controlled Substances Act, as prohibited in § 5-64-401;
21. Burglary, as prohibited in § 5-39-201;
22. Promotion of prostitution in the first degree, as prohibited in § 5-70-104;
23. Stalking, as prohibited in § 5-71-229;
24. Forgery, as prohibited in Sec. 5-37-201
25. Breaking or entering, as prohibited in Sec 5-39-202;
26. Obtaining a controlled substance by fraud, as prohibited in Sec. 5-64-403; and
27. Criminal attempt, criminal complicity, criminal solicitation, or criminal conspiracy as prohibited in §§ 5-3-201, 5-3-202, 5-3-301, and 5-3-401, to commit any of the offenses listed above.

(b) These offenses will permanently disqualify a person from employment by a service provider:

1. Capital murder, as prohibited in § 5-10-101;
2. Murder in the first degree and second degree, as prohibited in §§ 5-10-102 and 5-10-103;
3. Kidnapping, as prohibited in § 5-11-102;
4. Rape and carnal abuse in the first degree, second degree, and third degree, as prohibited in §§ 5-14-103 - 5-14-106;
5. Sexual abuse in the first degree and second degree, as prohibited in §§ 5-14-108 and 5-14-109;
6. Endangering the welfare of an incompetent person in the first degree, as prohibited in § 5-27-201;
7. Felony adult abuse, as prohibited by § 5-28-103; and
8. Arson, as prohibited in § 5-38-301.

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7. Program Management and Compliance Monitoring. The DDS Licensure Section has the responsibility for managing the Criminal Record Check program and for monitoring compliance with this policy and all related procedures.

References: Arkansas Code Annotated (ACA) § 20-48-701 *et. seq.*, § 20-33-201 through 203

Department of Human Services Policy 1052 and Procedures

Administrative Rules and Regulations Subcommittee of the Arkansas Legislative Council: reviewed December 6, 2001

Procedures
For Conducting
Criminal Record Checks
On Employees of
Service Providers
For
Individuals With
Developmental Disabilities

March 5, 2003

Arkansas Department of Human Services
Division of Developmental Disabilities Services

Licensure and Standards
Post Office Box 1437, Slot N203
Little Rock, Arkansas 72203-1437
(501) 682-8696
fax (501) 682-8637

AUTHORITY

Authority:

The following procedures for conducting criminal record checks on employees of service providers of individuals with developmental disabilities in the State of Arkansas are duly adopted and promulgated by the Arkansas Department of Human Services, Division of Developmental Disabilities Services, pursuant to the authority expressly conferred by:

Arkansas Code Annotated § 20-48-801 *et. seq.* (Act 1548 of 2001).
Arkansas Code Annotated § 20-33-201 through 203.

Supplements:

These procedures shall be promulgated as a supplemental part of the following: DDS Standards and Guidelines for Community Programs - Section 200, and contractual agreements with certified providers.

Severability:

If any provisions of these procedures, or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications which can be given effect without the invalid provision or application, and to this end the provisions hereof are declared severable.

Immunity:

Individuals, the licensing agency, service providers, and requesting agencies are immune from suit or liability for damages for acts or omissions, other than malicious acts or omissions, occurring in the performance of duties imposed by Act 1548 of 2001.

"The Arkansas Department of Human Services is in compliance with Titles VI and VII of the Civil Rights Act and operates, manages, and delivers services without regard to age, religion, disability, political affiliation, veteran status, sex, race, color or natural origin."

If you need this material in a different format, such as large print, contact the DHS Americans with Disabilities Act Coordinator at (501) 682-6880 (voice) or 682-8933 (TDD).

Procedures for

Conducting Criminal Record Checks

On Employees of Service Providers For

Individuals with Developmental Disabilities

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100 DEFINITIONS

As used in these procedures the following definitions shall apply unless the procedure clearly states otherwise:

Administrative capacity – Work by an employee of a service provider that is of a business or financial nature and that does not meet the definition of “care”, as defined below

Bureau - The Identification Bureau of the Department of the Arkansas State Police

Care - The treatment, services, assistance, education, training, instruction or supervision of an individual with developmental disabilities, for which a service provider is reimbursed either directly or by arrangement with a governmental agency or receives reimbursement or payment either directly or indirectly from Medicaid

Central Registry check – Review of one or more Central Registries maintained by any Division of the Department of Human Services or the Arkansas State Police

Employee - Any person who provides care (see definition above) to an individual with developmental disabilities on behalf of, under the supervision of, or by arrangement with a service provider or any individual certified as a provider. Also, any adult person who is living in an alternative living home or in any other setting in which an employee of a service provider performs services for which the service provider is paid by the government.

Also, any person provided by or pursuant to contract with a private placement agency or contract-staffing agency.

Excluded from this definition is: a person who is a family member of the individual being provided care, a person who serves as a volunteer, or a person who works in an administrative capacity, as defined above.

Final Determination – The determination by the licensing agency that an applicant or employee who has a criminal record is qualified for or disqualified from employment

Individual with developmentally disabilities – A person with a disability that is attributable to:

1. Mental retardation, cerebral palsy, epilepsy, or autism;
2. Any other condition of a person found to be closely related to mental retardation because it results in an impairment of general intellectual functioning or adaptive behavior similar to those of mentally retarded persons or requires treatment and services similar to those required for mentally retarded persons; or
3. Dyslexia resulting from a disability associated with mental retardation, cerebral palsy, epilepsy, or autism

Initial Determinations - Determinations made by the service provider, which include:

1. The determination that an applicant or employee is qualified for employment, based on the absence of any criminal history by the applicant or employee;

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2. The determination that a misdemeanor criminal record or a felony criminal record must be referred to the licensing agency for final determinations;
3. The determination that an individual who has a misdemeanor criminal record or a felony criminal record shall be temporarily disqualified from employment until a final determination is made by the licensing agency.

Licensing agency - The government agency (Department of Human Services, Division of Developmental Disabilities Services) charged with licensing or certifying a service provider to provide care to individuals with developmental disabilities, hereafter known as "DDS"

National criminal history check - A review of national criminal records maintained by the Federal Bureau of Investigation (FBI) based on fingerprint identification or other positive identification methods, which must be preceded by a check of state records maintained by the Bureau

National report - A statement of the criminal history of an individual issued by the FBI and sent to the licensing agency

Service provider - The qualified entity, licensed or certified by DDS, that is responsible for direct care services to individuals with developmental disabilities, hereafter known as "provider"

State criminal history check - A review of state criminal records conducted by the Identification Bureau of the Arkansas State Police.

State report - A statement of the criminal history of an individual issued by the Bureau and sent to the provider.

200 IMPLEMENTATION REQUIREMENTS

201 Effective August 13, 2002,

(a) DDS shall issue a determination of employment qualification or disqualification on a person, and

(b) providers shall not knowingly employ or hire a person who has been found guilty or has pled guilty or nolo contendere (no contest) to any of the offenses listed below by any court in the State of Arkansas or to any similar offense by a court in another state or to any similar offense in a federal court:

1. Capital murder, as prohibited in Arkansas Code Annotated (A.C.A.) § 5-10-101;
2. Murder in the first degree and second degree, as prohibited in A.C.A. §§ 5-10-102 and 5-10-103;
3. Manslaughter, as prohibited in A.C.A. § 5-10-104;
4. Negligent homicide, as prohibited in A.C.A. § 5-10-105;
5. Kidnapping, as prohibited in A.C.A. § 5-11-102;
6. False imprisonment in the first degree, as prohibited in A.C.A. § 5-11-103;
7. Permanent detention or restraint, as prohibited in A.C.A. § 5-11-106;
8. Robbery, as prohibited in A.C.A. § 5-12-102;
9. Aggravated robbery, as prohibited in A.C.A. § 5-12-103;
10. Battery, as prohibited in A.C.A. §§ 5-13-201, 5-13-202, and 5-13-203;
11. Aggravated assault, as prohibited in A.C.A. § 5-13-204;

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12. Introduction of controlled substance into body of another person, as prohibited in A.C.A. § 5-13-210;
13. Terroristic threatening in the first degree, as prohibited in A.C.A. § 5-13-301;
14. Rape and carnal abuse in the first degree, second degree, and third degree, as prohibited in A.C.A. §§ 5-14-103 - 5-14-106;
15. Sexual abuse in the first degree and second degree, as prohibited in A.C.A. §§ 5-14-108 and 5-14-109;
16. Sexual solicitation of a child, as prohibited in A.C.A. § 5-14-110;
17. Violation of a minor in the first degree and second degree, as prohibited in A.C.A. §§ 5-14-120 and 5-14-121;
18. Incest, as prohibited in A.C.A. § 5-26-202;
19. Offenses against the family, as prohibited in A.C.A. §§ 5-26-303 - 5-26-306;
20. Endangering the welfare of an incompetent person in the first degree, as prohibited in A.C.A. § 5-27-201;
21. Endangering the welfare of a minor in the first degree, as prohibited in A.C.A. § 5-27-203;
22. Permitting child abuse, as prohibited in subdivisions (a)(1) and (a)(3) of A.C.A. § 5-27-221;
23. Engaging children in sexually explicit conduct for use in visual or print media, transportation of minors for prohibited sexual conduct, or pandering or possessing visual or print medium depicting sexually explicit conduct involving a child, or use of a child or consent to use of a child in a sexual performance by producing, directing, or promoting a sexual performance by a child, as prohibited in A.C.A. §§ 5-27-303, 5-27-304, 5-27-305, 5-27-402, and 5-27-403;
24. Felony adult abuse, as prohibited in A.C.A. § 5-28-103;
25. Theft of property, as prohibited in A.C.A. § 5-36-103;
26. Theft by receiving, as prohibited in A.C.A. § 5-36-106;
27. Arson, as prohibited in A.C.A. § 5-38-301;
28. Burglary, as prohibited in A.C.A. § 5-39-201;
29. Felony violation of the Uniform Controlled Substances Act, as prohibited in A.C.A. § 5-64-401;
30. Promotion of prostitution in the first degree, as prohibited in A.C.A. § 5-70-104;
31. Stalking, as prohibited in A.C.A. § 5-71-229;
32. Forgery, as prohibited in A.C.A. § 5-37-201;
33. Breaking or entering, as prohibited in A.C.A. § 5-39-202;
34. Obtaining a controlled substance by fraud, as prohibited in A.C.A. § 5-64-403; and
35. Criminal attempt, criminal complicity, criminal solicitation, or criminal conspiracy, as prohibited in §§ 5-3-201, 5-3-202, 5-3-301, and 5-3-401, to commit any of the offenses listed in this subsection.

202 If an individual, however, has one (1) date of conviction for offenses listed above in Section 201, this conviction shall not, by itself, disqualify an applicant for employment if:

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- (a) the date of the one (1) conviction is at least ten (10) years prior to the date of the application for employment, and
- (b) the individual has had no criminal convictions of any type or nature during the intervening ten-year period

unless the conviction was for one of the offenses noted below. There is a permanent disqualification for employment for the eight offenses noted in Section 203, regardless of the number of convictions or the length of time since conviction.

203 Because of the serious nature of certain offenses noted in Section 201 and because of the close relationship of the offenses to the type of work that is to be performed, convictions for the following offenses shall result in **permanent disqualification** for employment by service providers:

1. Capital murder, as prohibited in A.C.A. § 5-10-101;
2. Murder in the first degree and second degree, as prohibited in A.C.A. §§ 5-10-102 and 5-10-103;
3. Kidnapping, as prohibited in A.C.A. § 5-11-102;
4. Rape and carnal abuse in the first degree, second degree, and third degree, as prohibited in A.C.A. §§ 5-14-103 - 5-14-106;
5. Sexual abuse in the first and second degree, as prohibited in A.C.A. §§ 5-14-108 and 5-14-109;
6. Endangering the welfare of an incompetent person in the first degree, as prohibited in A.C.A. § 5-27-201;
7. Felony adult abuse, as prohibited in A.C.A. § 5-28-103; and
8. Arson, as prohibited in A.C.A. § 5-38-301.

204 An applicant or employee may be disqualified from employment when the applicant or employee has been found guilty of or has pled guilty or nolo contendere (no contest) to a **misdemeanor** if the offense involved:

1. exploitation of an adult,
2. abuse of a person,
3. neglect of a person,
4. theft, or
5. sexual contact.

Convictions for the above offenses will require a determination of employment qualification or disqualification by DDS and must meet the single conviction and ten-year timeframe as noted in Section 202.

205 Criminal record checks shall be conducted on all current employees by October 1, 2002. All employees hired prior to August 13, 2001 shall request criminal record checks in the same manner as new applicants for employment. These requests may be made within any time frame chosen by the provider that ensures that criminal record checks on all current employees are completed by October 1, 2002.

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206 Any applicant to whom a provider intends to offer employment shall be subject to a criminal record check initiated by the provider and following these procedures, effective August 13, 2001. A criminal record check shall be performed on any applicant to whom the provider intends to offer a position as an “employee” who provides “care” to an individual with developmental disabilities, as these terms are defined in Section 100 of these procedures.

207 Providers may determine the need to utilize workers from a private placement agency or contract-staffing agency, or to contract for care services from an outside vendor. In such cases, it shall be the responsibility of the private placement agency, contract-staffing agency, or outside vendor to initiate criminal record checks as provided by these procedures prior to placing the worker under the provider’s supervision. The process is as follows:

1. When a provider needs to utilize the workers or services described above, the provider shall notify such agency/vendor to contact DDS for information to conduct criminal record checks as specified in these procedures.
2. Upon contact by an agency/vendor, DDS shall send a packet containing policies, forms, and procedures related to criminal record checks.
3. The agency/vendor shall initiate criminal record checks on applicable employees as prescribed in Section 300 of these procedures and shall send to DDS any reports that contain criminal records.
4. DDS shall issue a determination letter to the agency/vendor regarding the employee’s qualification or disqualification for employment based on the criminal record report.
5. Upon the assignment of a person to work for a provider, the provider shall obtain a copy of the person’s criminal record report from the agency. If a criminal record was found, the provider also shall obtain a copy of the DDS determination letter from the agency/vendor prior to allowing the individual to work for the provider.

208 Except as allowed below, providers shall insure completion of a request form and a fingerprint card, and payment of separate, appropriate fees for conducting both a state and a national (FBI) criminal record check.

209 A state-only criminal record check is allowed only if the provider can verify either of the following:

1. The applicant has been employed in the State of Arkansas to provide care to individuals with developmental disabilities within sixty (60) calendar days before the application for employment, or
2. The applicant has lived continuously in the State of Arkansas for the past five (5) years.

Note: Examples of evidence that can be used to verify residency include, but are not limited to: employment records, payroll check stubs, tax records, rent/house payment records, utility bills, school records, etc. Providers shall maintain copies

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of such residency verification when a state-only criminal record check is conducted.

210 In a criminal record check that results in the disqualification of an applicant or employee, the provider must provide to the individual a copy of the determination letter issued by DDS.

211 A person may challenge the completeness or accuracy of criminal history information issued by the Bureau. DDS shall make employment determinations based on the information obtained from the Bureau or FBI and shall not respond to allegations regarding the disposition, expungement, or accuracy of the information. The process for the applicant or employee to challenge the record is as follows:

1. Any challenges to the accuracy of the report should be directed to:
State Identification Bureau
#1 State Police Plaza Drive,
Little Rock, Arkansas 72209
(501) 618-8500.
2. A person, upon positive identification verification, may review his/her criminal history information maintained by the Identification Bureau or the central repository.
3. Only the subject, the subject and his/her attorney, or the subject's attorney authorized in writing by the subject may review criminal history information.
4. If, after review, the subject believes that the records are incorrect or incomplete, he/she may request an examination and correction of the records by the agency responsible for the records.
5. If it is determined that the criminal history information is inaccurate, incomplete, or improperly maintained, that information shall be corrected.
6. The agency responsible for the records shall immediately notify every agency or person known to have received this information within the previous one-year period and provide them with corrected information.
7. A person whose record has been corrected has the right to know the names of those agencies or individuals known to have received the previously incorrect criminal history information.
8. The right of a person to review his/her criminal history record shall not be used by a prospective employer or others as a means to circumvent procedures or fees for accessing records for non-criminal justice purposes.

212 All reports obtained under these procedures are confidential and are restricted to the exclusive use of the Arkansas Crime Information Center, the Bureau, DDS, the provider, and the person who is the subject of the report. The information contained in reports shall not be released or otherwise disclosed to any other person or agency except by court order and are specifically exempt from disclosure under the Arkansas Freedom of Information (FOI) Act (A.C.A. § 25-19-101, et seq.) except to DDS, the provider, or other requesting agency.

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Information kept on file at a service provider concerning criminal records should have limited access. This may be accomplished by use of a locked cabinet or by storage in the director's office.

Note: Act 1109 of 1993 (A.C.A. § 12-12-1013) states that criminal history information may be provided to the subject, the subject's attorney, or other person who is authorized in writing by the subject.

213 Each provider shall maintain on file, subject to inspection by the Arkansas Crime Information Center, the Bureau, or DDS, evidence that the provider has complied with the requirements of these procedures. Providers shall maintain copies of completed, signed and notarized criminal record check requests, state criminal record reports, residency verification, and final determinations received from DDS.

300 CRIMINAL RECORD CHECK PROCESS FOR APPLICANTS AND EMPLOYEES

301 A criminal record check must be conducted by the provider when a person applies for a position as an employee, as defined by these procedures, if the provider intends to make an offer of employment to the applicant. The process as described in this section for applicants shall also be used when current employees submit to criminal record checks as required by Section 205 of these procedures.

302 Before making an offer of employment, and on an on-going basis for current employees, a provider shall inform applicants and employees that initial and continued employment are dependent upon the results of criminal history record checks.

303 DDS shall maintain a file of individuals on whom final determinations of qualification or disqualification for employment have been made, based on criminal record check information provided to DDS. The file may also contain determinations of employment disqualification based on administrative findings of abuse, neglect, theft, etc., by individuals that did not result in criminal convictions.

304 Before performing a criminal record check on an applicant, a provider shall request a review by DDS of this determination file, which will be available for inquiries by telephone during normal business hours, Monday through Friday. The process to check the file shall be as follows:

1. At the time the provider makes an offer of employment to an applicant and prior to submitting forms for a criminal record check, the provider shall call DDS Licensure.
2. The provider shall query DDS on an individual, using the individual's name, social security number, date of birth, and other identifying information.
3. If a disqualification determination record does exist, DDS will inform the provider.

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4. An applicant with a disqualification determination is not eligible for hire in a position as an “employee” who provides “care” to an individual with developmental disabilities, as these terms are defined in Section 100 of these procedures.
5. If the applicant has no record of disqualification for employment in the determination file, the provider may initiate the criminal record check and offer temporary employment to the applicant.
6. A provider is not required to check the DDS determination file when an employee hired before August 13, 2001 requests a criminal record check.

305 A provider must initiate a check of both the Central Registry for adult abuse and to the Central Registry for child abuse on an individual to whom the provider intends to offer employment. The provider may continue temporary employment of an applicant while waiting for the results of these Registry checks. If no finding of fault record is found, the provider may continue temporary employment of the individual, while waiting for criminal record check results.

If, however, a finding of fault record is found in either Registry, the individual who receives this information shall notify the Board of Directors of a licensed provider and the Director of a certified provider in writing so that corrective action measures may be determined. These measures may include, but are not limited to, training, probationary employment, or termination of employment. Should a Board of Directors/Certified Program Director decide to hire or continue the employment of an individual with a finding of fault record in a Central Registry, the Board/Director assumes any additional liability that may arise from that decision.

A provider shall initiate a check to both Central Registries when a current employee requests a criminal record check unless the employee has maintained continuous employment with the provider and Central Registry checks were performed within twenty-four (24) months of the criminal record check. The person who receives the new report or verifies the existing report on a current employee shall notify the provider’s Board of Directors if a finding of fault record is/was found. The Board may then take whatever corrective actions it deems appropriate,

306 If the provider intends to offer employment and the determination file at DDS lists no employment disqualification determination, the provider shall begin the criminal record check process. At this time the provider shall determine the Arkansas residential and/or employment status of the applicant, as described in Section 209 of these procedures. The provider shall instruct the applicant to complete and sign a criminal record check request form bearing the DDS routing number, which may be obtained from DDS. The person’s signature must be notarized. A fingerprint card obtained from DDS must be completed, if a national record check is required.

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307 The provider shall forward the request form, a self-addressed envelope, and appropriate fee(s) to the Identification Bureau of the Arkansas State Police within five (5) working days. If a national record check is required (see Section 209), both a national (FBI) record check and a state record check must be performed and a completed fingerprint card and separate fee must be sent. The provider must maintain a copy of the completed, signed, and notarized criminal record request form for verification of compliance (see Section 211). Request forms (DDS-5088) and fingerprint cards preprinted with the DDS routing number and DDS' statutory authority for fingerprinting must be used and may be obtained from DDS.

308 If an applicant or a current employee informs the provider, either verbally or in writing, of a prior criminal record, the provider shall temporarily disqualify the individual from employment until:

- (a) The criminal record request form and fees are sent to the Bureau,
- (a) the criminal record report is received from the Bureau,
- (b) the report is sent to DDS, and
- (c) a final determination is received from DDS.

309 Upon receipt of a correctly completed criminal record check request form and the appropriate fee, the Bureau shall perform a state criminal record check and shall forward to the FBI the form, fee, and fingerprint card required for a national record check, if required. Within three (3) working days of receipt of a request, the Bureau shall issue a report to the provider of the results of an Arkansas criminal record check.

310 The provider will review the criminal record report sent by the Bureau and:

- (a) If no criminal record is found, the provider may continue employment of the individual.
- (b) If a criminal record is found, the provider will temporarily disqualify the individual from employment. The provider will then send the criminal record report by mail or by facsimile transmission (fax) to DDS for a determination. DDS will make a determination of employment qualification or disqualification, in accordance with requirements specified in Sections 201 – 204 of these procedures.

311 Reports from the FBI that are the result of a national criminal record check will not be sent to providers. These reports will be sent directly to DDS. The information contained in these FBI reports is not releasable to providers. DDS will make a determination of employment qualification or disqualification, in accordance with requirements specified in Sections 201 – 204 of these procedures, based on the report received from the FBI.

312 DDS shall forward its determination of employment qualification or disqualification to the provider in writing. A person with a disqualification determination is not eligible to work in a position as an “employee” who provides

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“care” to an individual with developmental disabilities, as these terms are defined in Section 100 of these procedures. The provider shall terminate the employment of a person who has been disqualified for such a position.

400 EXCEPTIONS/EXCLUSIONS

401 Any person who submits evidence of:

- (a) continuous employment in the State of Arkansas for the past 12 months, and
- (b) successful completion of a criminal record check within the last 12 months or in accordance with that person's professional license,

shall not be required to apply for a new criminal record check. The provider must maintain copies of the previous criminal record check. If a criminal record is found on this earlier criminal record check, the provider must submit the report to DDS and DDS must make a determination of qualification for employment.

Note: To be acceptable, a previously conducted criminal record check must comply with provisions set forth in Act 1548 of 2001, including a national FBI record check, when warranted. Criminal record checks performed on provider employees under the direction and regulations of the Department of Human Services, the Division of Child Care and Early Childhood Education and the Division of Medical Services, Office of Long Term Care, are considered to be acceptable. These reports must be on file with the provider.

402 The requirement for a criminal record check under these procedures shall not apply to persons who render care subject to professional licenses obtained for the following occupations:

1. Licensed professional counselors,
2. Social workers,
3. Dentists,
4. Registered or licensed practical nurses,
5. Occupational therapists,
6. Pharmacists,
7. Physical therapists,
8. Physicians and surgeons,
9. Podiatrists,
10. Psychologists and psychological examiners,
11. Speech-language pathologists and audiologists, or
12. Nursing home administrators.

500 WAIVERS

501 The provisions of these procedures may not be waived by the licensing agency.

600 PENALTIES

601 Failure to obtain criminal record checks shall be grounds for DDS to deny or revoke a provider's license or certification. This includes failure to maintain on file documentation that criminal record checks were initiated by the provider, copies of criminal record check reports received by the provider, verification of residency for state-only checks, and copies of employment determinations made by DDS as specified in these procedures. Decisions regarding license denial or revocation shall be made by the Director of DDS.

602 Failure to comply with employment disqualification determinations made by DDS or other requirements of these procedures shall be grounds for the imposition of sanctions against a provider. Failure to comply shall include, but is not limited to, the hiring or continued employment of an individual who has been deemed disqualified for employment in a position as an "employee" who provides "care" to an individual with developmental disabilities, as these terms are defined in Section 100 of these procedures. Sanctions may include but are not limited to:

- Revocation of the provider's license or certification
- Probationary status of the provider's license or certification,
- Suspension of the provider's license or certification for a specific period of time,
- Denial of funding for new clients for a specific period of time, or
- Any combination of sanctions deemed appropriate.

Decisions regarding sanctions shall be made by the Director of DDS.

603 When determining whether to impose denial, revocation, or other sanctions and in affixing the type of penalty, the Director shall consider:

1. The gravity of the violation, including the probability that death or serious physical or psychological harm to an individual will result or has resulted;
2. The severity and scope of the actual or potential harm;
3. The extent to which the provisions of the statutes or procedures were violated;
4. Indications of "good faith" exercised by the provider, which may include:
 - (a) Awareness of the applicable statutes and procedures and reasonable diligence in securing compliance;
 - (b) Prior accomplishments manifesting the provider's desire to comply with the requirements;
 - (c) Efforts to correct; and
 - (d) Any other mitigating factors in favor of the provider.

700 APPEALS

701 An administrative hearing is available to a person, herein referred to as a petitioner, who disagrees with a determination of employment disqualification or a decision regarding licensure denial or revocation, or other sanction imposed by DDS, as described in these procedures. These provisions do not apply to a

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person's challenge of the record obtained from the Bureau (see Section 210 of these procedures).

702 In the event that a petitioner wishes to appeal a decision by DDS, he or she may do so by following the appropriate appeals process detailed in:

- DDS Policy 1076 (for providers), or
 - DHS Policy 1098.0 (for applicants and employees)
- which may be obtained from DDS.